

SCOTT N. SCHOOLS (SC 9990)  
 United States Attorney  
 JOANN M. SWANSON (CSBN 88143)  
 Chief, Civil Division  
 MELANIE L. PROCTR (CSBN 228971)  
 Melanie.Proctor@usdoj.gov  
 Assistant United States Attorney

450 Golden Gate Avenue, Box 36055  
 San Francisco, California 94102-3495  
 Telephone: (415) 436-6730  
 FAX: (415) 436-6927

Attorneys for Defendant

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

DMYTRO VEROVKIN,	)	No. C 07-3987 CW
	)	
Plaintiff,	)	[PROPOSED] ORDER GRANTING
	)	DEFENDANT'S MOTION FOR
v.	)	SUMMARY JUDGMENT
	)	
DAVID N. STILL, District Director, United	)	
States Citizenship and Immigration	)	
Services,	)	
	)	
Defendant.	)	

**INTRODUCTION**

Plaintiff asks the Court to order Defendant to adjust his status to that of a lawful permanent resident. Defendant asks the Court to grant summary judgment in his favor. For the reasons stated below, the Court GRANTS Defendant's Motion.

**ANALYSIS**

Plaintiff entered the United States on April 25, 2004, as a K-2 nonimmigrant. Shortly thereafter, his mother married a United States citizen. However, Plaintiff and his mother did not apply to adjust their nonimmigrant status to that of lawful permanent residents until September 14, 2005, fifteen months after the marriage. One month later, Plaintiff reached his twenty-first birthday. As such, by the time Plaintiff's mother adjusted her status, he was no longer

1 a minor.

2 Section 245 of the Immigration and Nationality Act, codified at 8 U.S.C. § 1255, authorizes  
3 the Secretary of the Department of Homeland Security (“Secretary”) to adjust the status certain  
4 aliens who have been admitted into the United States. The subsection applicable to the case at hand  
5 provides:

6 **Alien admitted for permanent residence on conditional basis; fiancée or fiancé**  
7 **of citizen** . . . The [Secretary] may not adjust, under subsection (a) of this section, the  
8 status of a nonimmigrant alien [with a K visa] except to that of an alien lawfully  
9 admitted to the United States on a conditional basis under section 1186a of this title  
as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the  
parent) to the citizen . . . .

10 8 U.S. § 1255(d). The section does not require applicants to have approved immigrant visa petitions.  
11 After two years, the conditional resident status may be lifted. 8 U.S.C. § 1186a. A minor alien who  
12 seeks to adjust his status on the basis of his parent’s marriage to a United States citizen must apply  
13 as an alien accompanying or following to join primary applicant for adjustment of status. 8 U.S.C.  
14 § 1101(a)(15)(K)(iii); 8 C.F.R. § 214.2(k)(6)(ii).

15 Here, because Plaintiff was no longer a minor at the time his mother adjusted her status, he  
16 was not eligible for adjustment under 8 U.S.C. § 1255(d). Moreover, he does not appear to have an  
17 immigrant visa available to him, as required by 8 U.S.C. § 1255(a). Accordingly, Plaintiff is not  
18 entitled to adjustment of status under any provision of immigration law.

### 19 CONCLUSION

20 For the foregoing reasons, Defendant’s motion for summary judgment is hereby GRANTED.  
21 Judgment for Defendant will be entered accordingly. Each of the parties will bear their own costs  
22 and fees.

23 IT IS SO ORDERED.

24 Dated:

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CLAUDIA WILKEN  
26 United States District Judge  
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